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HARVARD LAW REVIEW.

VOL. XIII.

JANUARY, 1900.

No. 5

THE DECLARATION OF INDEPENDENCE.

"When forced, therefore, to resort to arms for redress, an appeal to the tribunal of the world was deemed proper for our justification. This was the object of the Declaration of Independence."—*Jefferson to Henry Lee, May 8, 1825.*

I.

THE Declaration of Independence, rightly or not, has often been criticised, as lacking in originality. John Adams, concurring in a slur of Timothy Pickering, said of it:—

"As you justly observe, there is not an idea in it but what had been hackneyed in Congress for two years before. The substance of it is contained in the declaration of rights, and the violation of those rights, in the Journals of Congress, in 1774.¹ Indeed, the essence of it is contained

¹ Declaration of Rights and Grievances, October 14, 1774. It is this state paper, which aroused Dr. Johnson's wrath, and occasioned the tract, "Taxation No Tyranny." "It were a curious, but an idle speculation," says the Doctor, "to inquire, what effect these dictators of sedition expect from the dispersion of their Letter among us. If they believe their own complaints in hardship, and really dread the danger which they describe, they will naturally hope to communicate the same perceptions to their fellow-subjects. But probably in America, as in other places, the chiefs are incendiaries, that hope to rob in the tumults of a conflagration, and toss brands among a rabble passively combustible. Those who wrote the Address though they have shown no great extent of profundity of mind, are yet probably wiser than to believe it; but they have been taught by some master of mischief, how to put in motion the engine of political elec-

in a pamphlet, voted, and printed by the town of Boston,¹ before the first Congress met, composed by James Otis, as I suppose, in one of his lucid intervals, and pruned and published by Samuel Adams."²

And again:—

"These two declarations, the one of rights and the other of violations,³ which are printed in the Journals of Congress for 1774, were two years afterwards recapitulated in the Declaration of Independence, on the Fourth of July, 1776."⁴

And yet again in a more querulous vein:—

"The declaration of independence of 4 July, 1776, contained nothing but the Boston declaration of 1772⁵ and the Congress declaration of 1774.⁶ Such are the caprices of fortune. This declaration of rights was drawn by the little John Adams. The mighty Jefferson, by the declaration of independence of 4 July, 1776, carried away the glory of the great and the little. J. A. 1813."⁷

Richard Henry Lee, who, in obedience to instructions from the Virginia Convention, moved the Resolution of Independence⁸ in

tricity; to attract by the sounds of Liberty and Property, to repel by those of Popery and Slavery; and to give the great stroke by the name of Boston."

¹ Boston Town Records, November 20, 1772. Samuel Adams, and not James Otis, was the author. ¹ Well's Life and Public Services of Samuel Adams, 501, note. Jefferson denies ever having seen the pamphlet. Jefferson to Madison, August 30, 1823, ¹ Randall's life of Jefferson, 186.

² Adams to Pickering, August 6, 1822, ² Adam's Life and Works, 512, 514.

³ Declaration of Rights and Grievances, *supra*.

⁴ Autobiography, ² Adam's Life and Works, 377.

⁵ Boston Town Records, November 20, 1772.

⁶ Declaration of Rights and Grievances, *supra*.

⁷ MS. note to Discourses on Davila, ⁶ Life and Works, 221, 278. This jealousy of Adams is very characteristic, but in the present instance, seems certainly justifiable. He had borne the brunt of the debate, which resulted in the adoption of the Resolution (July 2), and the Declaration (July 4), of Independence; was older than Jefferson by seven years; had been in Congress continuously, while Jefferson had not; and, undoubtedly, at this time, was a more prominent figure than Jefferson. It is questionable, indeed, whether the members of Congress fully realized the importance that history would attach to the report of the Committee upon the Declaration, and whether they did not themselves singularly underrate the relative value in this respect of the Revolution (July 2), and the Declaration (July 4.) Adams could never master his irritation at Jefferson's fame. He writes, in a letter to Benjamin Rush, May 1, 1807: "Jefferson has acquired such glory by his declaration of independence in 1776, that I think I may boast of my declaration of independence in 1755 [a letter written to Nathan Webb], twenty-one years older than his." ⁹ Adams's Life and Works, 591, 592.

⁸ This Resolution was in these words: "That these United Colonies are, and of right ought to be free and independent States; that they are absolved from all allegi-

Congress, possibly from no higher motives, ascribed the doctrines of the Declaration to Locke.¹ And so far has this disparagement gone, that charges, even, have been made of plagiarism from the spurious North Carolina Mecklenburg Resolves, of May 20, 1775.²

II.

Attempts of this character, hitherto, one and all have signally failed, as they have deserved to fail. Except as a matter of historical, or biographical interest, it makes no difference whether the Declaration was a copy, or an original; for, as Jefferson, in his letter to Madison, of August 30, 1823, submitting Adam's criticisms upon the Declaration, well says, it was not "any part of my

ance to the British Crown; and that all political connection between them and the State of Great Britain is, and ought to be, totally dissolved." 6 Force's American Archives (4th series), 1699. Jefferson's conclusion to his original draft of the Declaration was: "We, therefore, the Representatives of the United States of America in General Congress assembled, do, in the Name and by the Authority of the good People of these States, reject and renounce all Allegiance and Subjection to the Kings of Great Britain, and all others who may hereafter claim by, through or under them; We utterly dissolve all political Connection which may have heretofore subsisted between us and the People or Parliament of Great Britain; and finally we do assert and declare these Colonies to be free and independent States," etc. 2 Ford's Writings of Jefferson, 57 and 58. This was changed, so as to conform to the phraseology of the Resolution of July 2, 1776, which, as appears from the above copy thereof, makes no reference to the People or Parliament of Great Britain, but only to the Crown.

¹ "Richard Henry Lee charged it as copied from Locke's treatise on government." Jefferson to Madison, August 30, 1823, 1 Randall's Life of Jefferson, 186.

² For references to a discussion of these, see 6 Winsor's Narrative and Critical History of America, 256. They first came to light in the Raleigh Register, April 30, 1819. Adams was much taken aback. He writes to Jefferson, June 22, 1819: "May I enclose you one of the greatest curiosities and one of the deepest mysteries that ever occurred to me? It is in the 'Essex Register' of June 5th, 1819. It is entitled the 'Raleigh Register Declaration of Independence.' How is it possible that this paper should have been concealed from me to this day? Had it been communicated to me in the time of it, I know, if you do not know, that it would have been printed in every whig newspaper upon this continent. You know, that, if I had possessed it, I would have made the hall of Congress echo and re-echo with it fifteen months before your Declaration of Independence." 10 Adam's Life and Works, 380. Jefferson, in his reply to Adams, July 9, 1819, while not expressly denying the authenticity of the Mecklenburg Declaration, states his strong incredulity upon the point: "But what has attracted my particular notice, is the paper from Mecklenburg county, of North Carolina, published in the 'Essex Register,' which you were so kind as to enclose in your last, of June the 22d. And you seem to think it genuine. I believe it spurious. I deem it to be a very unjustifiable quiz, like that of the volcano, so minutely related to us as having broken out in North Carolina, some half dozen years ago, in that part of the country, and perhaps in that very county of Mecklenburg, for I do not remember its precise locality." 3 Randall's Life of Jefferson, 572.

[his] charge to invent new ideas altogether, and to offer no sentiment which had ever been expressed before."¹ The complete answer to such carping is the one here given by Jefferson himself, and indorsed by Madison in his reply, of September 6:—

"Nothing can be more absurd than the cavil that the declaration contains known, and not new truths. The object was to assert, not to discover truths, and to make them the basis of the Revolutionary act. The merit of the Draught, therefore, could only consist in a lucid communication of human rights, in a condensed enumeration of the reasons for such an exercise of them, and in a style and tone appropriate to the great occasion, and to the spirit of the American people."²

Or, in the words of Webster:—

"It has sometimes been said, as if it were a derogation from the merits of this paper, that it contains nothing new; that it only states grounds of proceedings, and presses topics of argument, which had often been stated and pressed before. But it was not the object of the Declaration to produce anything new. It was not to invent reasons for independence, but to state those which governed the Congress. For great and sufficient causes, it was proposed to declare independence; and the proper business of the paper to be drawn, was to set forth those causes, and justify the authors of the measure, in any event of fortune, to the country and to posterity. The cause of American independence, moreover, was now to be presented to the world, in such manner, if it might so be, as to engage its sympathy, to command its respect, to attract its admiration; and

¹ 1 Randall's *Life of Jefferson*, 186. Jefferson, in this letter, also, strikes out at Pickering, who had read the Declaration of Independence, at Salem, July 4, 1823, and on that occasion, had given to the public the contents of Adams's letter. Pickering, in a patronizing way, spoke of the "high tone" of the Declaration, and of the "improvement" that it had undergone by "reduction" to three fourths of its original size." He then went out of his way to commend the Treaty of Peace of 1783 with Great Britain, wherein "the contending parties acknowledged the hand of Divine Providence in disposing the hearts of both 'to forget all past misunderstandings and differences,'" and further to point out the "exact correspondence" of this "solemn profession" with "the fine sentiment happily expressed by Mr. Jefferson in the Declaration of Independence concerning our British Brethren, 'to hold them, as we hold the rest of mankind, enemies in war, in peace friends.'" ² *Life of Timothy Pickering*, 463. Jefferson retaliated: "Timothy" [such is his disrespectful appellation] "thinks the instrument the better for having a fourth of it expunged. He would have thought it still better, had the other three fourths gone out also, all but the single sentiment (the only one he approves), which recommends friendship to his dear England, whenever she is willing to be at peace with us. . . . In opposition, however, to Mr. Pickering, I pray God that these principles [that is, those of the Declaration] may be eternal." Jefferson to Madison, August 30, 1823, 4 Randolph's *Jefferson's Writings*, 375, 377.

² Writings of James Madison, 336.

in an assembly of most able and distinguished men, Thomas Jefferson had the high honor of being the selected advocate of this cause. To say that he performed his great work well, would be doing him injustice. To say that he did excellently well, admirably well, would be inadequate and halting praise. Let us rather say, that he so discharged the duty assigned him, that all Americans may well rejoice that the work of drawing the title-deed of their liberties devolved upon him."¹

But while it takes nothing from the Declaration of Independence, or the just fame of its author, that it was not the promulgation of a novel creed, but the annunciation of familiar doctrine, yet, notwithstanding, this disclaimer of originality is of the first importance in one aspect. It does not isolate the Declaration of Independence from all other state-papers, and make the Declaration itself the sole source of authoritative interpretation. It leaves open the whole body of contemporary history, as, also, the literature of the times, to clear up ambiguities, or to supply omissions. This is a most essential point.

III.

No one can compare the Declaration of Independence with the Virginia Bill of Rights without being struck by the remarkable similarity, both in matter, and style, of the two documents.²

1. The Declaration says: "All men are created equal." In the original draft: "All men are created equal and independent."

The Bill of Rights says: "All men are by nature equally free and independent." In the original draft: "All men are created equally free and independent."³

2. The Declaration says: "They are endowed by their Creator with certain unalienable Rights; that among these are Life, Liberty, and the pursuit of Happiness." In the original draft: "From that equal creation, they derive rights inherent and inalienable, among which are the preservation of life, and liberty, and the pursuit of happiness." In an intermediate draft: "They are endowed by their Creator with equal rights, some of which are," etc.

The Bill of Rights says: "And have certain inherent rights, of

¹ Oration on Adams and Jefferson, Faneuil Hall, Boston, August 2, 1826. 1 Works, 109, 126, 127.

² The collation made in this section is based upon the material in 1 Randall's *Life of Jefferson*, and 1 Rowland's *George Mason, Life, Correspondence, and Speeches*.

³ The report of the committee reads: "All men are born," etc. 6 Force's *American Archives*, 1537, note.

which, when they enter into a state of society, they cannot, by any compact, deprive or divest their posterity; namely, the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety." In the original draft: "And have certain inherent natural rights, of which they cannot, by any compact, deprive or divest their posterity; among which are the enjoyment of life and liberty, with the means of acquiring and possessing property, and pursuing and obtaining happiness and safety."¹

3. The Declaration says: "To secure these rights, Governments are instituted among Men, deriving their just powers from the consent of the governed." In the original draft: "To secure these ends," etc.

The Bill of Rights says: "All power is vested in, and consequently derived from, the people; that magistrates are their trustees and servants, and at all times amenable to them." In the original draft: "All power is by God and Nature vested in," etc.² Again, "Nor [can men, to wit, those] having sufficient evidence of permanent, common interest with and attachment to the community, [be] bound by any law, to which they have not, in like manner [that is, by themselves, or through their representatives, freely elected, as in case of taxation], assented, for the public [in the original draft, "common"] good."³

4. The Declaration says: "Whenever any Form of Government becomes [in the original draft, "shall become"] destructive of these ends, it is the Right of the People to alter or to abolish it, and to institute new Government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem most likely to effect their Safety and Happiness."

The Bill of Rights says: "When [in the original draft, "whenever"] any government shall be found inadequate or contrary to these purposes, a majority of the community hath an indubitable, unalienable, and indefeasible right to reform, alter, or abolish it, in such manner as shall be judged most conducive to the public weal."⁴

5. The Bill of Rights has a clause, which the Declaration has

¹ The report of the committee is like the original draft. 6 Force's American Archives, 1537, note.

² The report of the committee is like the final draft. *Ib.*

³ The report of the committee reads: "any laws," and "common good." *Ib.*

⁴ The report of the committee is like the original draft. *Ib.*

not (unless the restriction upon the character of the new government to be instituted after revolution be such): "Government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community. Of all the various modes and forms of government, that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration."¹ A hereditary monarchy, however, was excluded from this class: "Neither ought the offices of magistrate, legislator, or judge, to be hereditary."²

IV.

It is a singular fact, that, in all the attacks upon the Declaration, as a copy, and not an original, greater stress has not been laid upon its manifest debt to the Virginia Bill of Rights. If there were no external evidence, the internal evidence itself would be sufficient to convince any candid mind, that there must have been some relation between these two great state-papers, and that they cannot possibly be conceived of as the products of two distinct minds, working apart, one from the other, without opportunity of communication. While similarity of thought, with difference of phrase may exist, and yet there be no necessary connection, identity of thought and phrase (to the extent, at least, that this occurs in the Declaration, and the Virginia Bill of Rights) cannot. If, therefore, there was a desire to rob Jefferson of any title of glory, why has it not been shown, as it readily could have been, that the Bill of Rights was the predecessor of the Declaration, and that the immortal part of the latter was taken from it.

It seems hard to say, unless the discovery of the real truth (as, indeed, was the fact with Adams) was not the sole object of inquiry. Perhaps, also, some investigators have been misled by the letter of Wythe to Jefferson, of July 27, 1776,³ and that of Jefferson to Woodward, of April 3, 1825.⁴ By this evidence, it appears, that Jefferson was the author, practically, of the *preamble* to the Constitution of Virginia. This *preamble*, however, must not be con-

¹ The report of the committee is like the final draft. 6 Force's American Archives, 1537, note.

² The report of the committee reads: "The idea of a man being born a magistrate, a legislator, or a judge, is unnatural, and absurd." *Ib.*

³ 1 Randall's Life of Jefferson, 195, note.

⁴ *Ib.* 195.

founded with the Virginia Bill of Rights. It consists merely of a recapitulation of grievances, similar to that included in the *body* of the Declaration of Independence, and, unlike the Bill of Rights, and the *preamble* to the Declaration of Independence, is not a statement of the Rights of Man.¹

V.

Jefferson was not the author of the Virginia Bill of Rights, and never made any claim to being such. On the contrary, he always frankly acknowledged that George Mason was the author. In the letter to Woodward, quoted above, he says: —

“The fact is unquestionable, that the Bill of Rights, and the Constitution of Virginia, were drawn originally by George Mason, one of our really great men, and of the first order of greatness.”²

And he repeats the statement, in a letter to Henry Lee: —

“That George Mason was the author of the Bill of Rights, and of the constitution founded on it, the evidence of the day established fully in my mind.”³

If further corroborative proof be needed, it may be found in the recent biography of George Mason, which deals of this matter in detail.⁴

VI.

It only remains to establish the relation of Jefferson to the Virginia Bill of Rights. While, as has been said, the internal evidence is such as to leave no doubt in an unprejudiced mind, yet, perhaps, it is fair, that the physical possibility of such relation should be demonstrated. It is true, that, in 1823, in the letter to Madison, Jefferson says: —

“Whether I had gathered my ideas from reading or reflection, I do not know. I know only that I turned to neither book nor pamphlet while writing it.”⁵

¹ Ford, the latest editor of Jefferson, frankly admits the similarity of the *preamble* of the Declaration to the Virginia Bill of Rights: “A comparison of the former [the *preamble* of the Declaration] with the Virginia Declaration of Rights would seem to indicate the source from which Jefferson derived a most important and popular part. 1 Ford’s Writings of Jefferson, 25.

² Jefferson to Woodward, April 23, 1825, 1 Randall’s Life of Jefferson, 195.

³ Jefferson to Henry Lee, May 8, 1825, 1 Rowland’s George Mason, Life, Correspondence, and Speeches, 253.

⁴ Rowland’s George Mason, Life, Correspondence, and Speeches, c. vii.

⁵ Jefferson to Madison, August 30, 1823, 1 Randall’s Life of Jefferson, 186.

But this was nearly fifty years after the event, — and less than three before his death, — when the particular circumstances attending composition may well have passed out of his mind, or become dimmed by lapse of time. One thing is certain, there are passages in the Declaration of Independence so nearly like passages in Jefferson's "Draft of a Virginia Constitution,"¹ and "A Summary View of the Rights of British America,"² that the conclusion seems inevitable, that, at the time of the drafting of the Declaration, Jefferson must have had one, or possibly both, of these documents before him. However that may be, it can easily be established, that the Virginia Bill of Rights, either in the form in which it was presented to the Virginia Convention, or that in which it was finally adopted by it, was in Philadelphia, in season to have been consulted by Jefferson. The committee to draft the Declaration of Independence was chosen³ by the Continental Congress, June 11, 1776, and did not make its report thereto till June 28 following. The Bill of Rights was reported to the Virginia Convention, May 27, 1776, and was adopted by it, June 12, 1776. Thomas Ludwell Lee, a member of the Virginia Convention, writes from Williamsburg to Richard Henry Lee, at Philadelphia, June 1, 1776: "I enclosed you by last post a copy of our Declaration of Rights nearly as it came through Committee. It has since been reported to the Convention."⁴ On the day that it was reported to the Convention, it was ordered "printed for the perusal of the members."⁵ June 10, 1776, Josiah Bartlett, one of the delegates from New Hampshire, then present in Congress, writes from Philadelphia to John Langdon: "I shall enclose you a paper containing the Bill of Rights drawn up by Virginia."⁶ It is evident, therefore, that the Virginia Bill of Rights was in circulation, in manuscript, or print among the members of Congress, at Philadelphia, in the first days of June, and that like the instructions to the Virginia delegates on Independence, of May 15, 1776, had attracted wide attention. Under these circumstances, it is impossible to believe, that Jefferson, a member of the delegation that introduced the Resolution of Independence, and

¹ 2 Ford's Writings of Jefferson, 7.

² 1 Ford's Writings of Jefferson, 421.

³ The Journals say, "appointed," but, from a thorough examination of them, it will appear, that this word was used by Charles Thomson, the Secretary, in cases of "election."

⁴ 1 Patrick Henry, Life, Correspondence and Speeches, 424.

⁵ 6 Force's American Archives (4th Series), 1538.

⁶ *Ib.* 1026, 1027.

heartily in sympathy with Lee in respect of the expediency of it, should have remained ignorant of what was common knowledge among other members of Congress, if not, at large, among the public itself. And if there was no impossibility of his being familiar with Mason's draft of the bill of rights, who can doubt, after a comparison of the two papers, such as has been made here, that much of the *preamble* of the Declaration of Independence, if not in substance, in form, was taken, — and by taken, is, by no means, meant improperly taken, — but taken, — and taken as the occasion justified — from the Virginia Bill? For, as has been demonstrated, George Mason, and not Jefferson, was the author of that bill.

VII.

The importance of this historical fact, if fact it is, lies in this: that the Virginia Bill of Rights is much more explicit than the Declaration of Independence, and more clearly indicates than the Declaration does the source of its origin. The Bill of Rights is plainly founded upon the "social compact" theory of government, and the terminology is the terminology of Locke, and other like writers, who have founded government upon the "social compact" basis. Indeed, the Virginia Bill of Rights uses the specific word, "compact," and, in its amended form, contains the phrase, "when they [men] enter into a state of society." Of this theory, then, George Mason and Jefferson were the modern expounders.

VIII.

What, therefore, is meant by the phrases in the Declaration of Independence, "All men are created equal"? "Unalienable Rights of Life, Liberty, and the pursuit of Happiness"? "Governments derive their just powers from the consent of the governed"? and that other phrase, in the introduction to the *preamble*, not hitherto referred to: "Nature, and Nature's God"?

Are these phrases, as the Declaration asserts, (of all but the last), "self-evident truths," or are they, as Rufus Choate said, "glittering and sounding generalities"?¹

¹ "If it [the Republican Party] accomplishes its objects, and gives the government to the North, I turn my eyes from the consequences. To the fifteen States of the South that government will appear an alien government. It will appear worse. It will appear a hostile government. It will represent to their eye a vast region of States organized upon anti-slavery, flushed by triumph, cheered onward by the voices of the

Do they stand for the freedom of the slave? For negro suffrage? For Indian suffrage? For manhood suffrage? For woman suffrage? For universal suffrage? For a republic? For representative government? And if for these, or any of these, for these, and any of these, without limitation, or qualification? Do they apply to barbarous states, as well as to civilized states? To all sorts and conditions of men, the uneducated as well as educated, with property or without? Or did the framers of the Declaration intend a different application? And, if a different application, what application?

IX.

The answer to these questions, or to many of them, must, in the nature of things, always remain more or less debatable. And yet it will not do to say, that there is no answer, and still less, to take refuge in empty rhetoric. There is much wit in the remark, apropos of the Declaration: "No intelligent man has ever misconstrued it, unless intentionally;"¹ but such an answer is hardly convincing. It may suffice for the arguments of the Confederacy, Utah polygamists, and woman suffragists,—those who have carried the doctrines of the Declaration to an absurdity, but it is not the answer which the vital importance of the question, seriously considered, fairly demands. And while perhaps, as has been intimated, no answer can be given, wholly free from dispute, yet this is far from saying that no progress is possible towards a correct solution.

X.

Several things can be predicated of the Bill of Rights and the Declaration:

1. Their first care was the justification of the Colonists in the right of revolution.²

2. They were adopted with no intention of conferring suffrage upon the negro, and probably with none of freeing him.³

pulpit tribune, and press; its mission to inaugurate freedom, and put down the oligarchy; its constitution the *glittering and sounding generalities* of natural right which make up the Declaration of Independence. And then, and thus is the beginning of the end."—Rufus Choate to the Maine Whig State Central Committee, August 9, 1856, 1 *Brown's Works of Rufus Choate*, 212, 215.

¹ Morse's *Life of Jefferson*, 40.

² Introduction to the *preamble* of the Declaration.

³ The portion of the Declaration relating to the slave trade was struck out, from political exigencies. Lincoln said in his speech, in Chicago, July 10, 1858: "I should

3. They had no relation to woman suffrage, in fact, to the suffrage, at all, manhood, property, universal, or otherwise.¹

like to know, — taking this old Declaration of Independence, which declares that all men are equal upon principle, and making exceptions to it, — where will it stop? If one man says it does not mean a negro, why not another say it does not mean some other man? If that Declaration is not the truth, let us get the statute book in which we find it, and tear it out." 1 Complete Works, 247, 259. He was speaking of what it should be held to mean then, rather than of what it was held to mean in 1776, but, even thus, he took pains to guard himself later at Charleston, Ill., September 18, 1858, as follows: "I will say that I am not, nor ever have been, in favor of bringing about in any way the social and political equality of the white and black races — that I am not, nor ever have been, in favor of making voters or jurors of negroes, nor of qualifying them to hold office, nor to intermarry with white people; and I will say in addition to this that there is a physical difference between the white and black races which I believe will forever forbid the two races living together on terms of social and political equality." 1 Complete Works, 369. What he believed that the rights of the negro were, he had defined in a previous speech, at Ottawa, August 21, 1858: "I agree with Judge Douglas, he [the negro] is not my equal in many respects — certainly not in color, perhaps not in moral or intellectual endowment. But in the right to eat the bread, without the leave of anybody else, which his own hand earns, he is my equal, and the equal of Judge Douglas, and the equal of every living man." 1 Complete Works, 286, 289. Whatever the original meaning was, the Declaration left the slave as it found him. "Upon the revolution, no other change took place in North Carolina than was consequent on the transition from a colony dependent on a European king, to a free and sovereign State. Slaves remained slaves. British subjects in North Carolina became North Carolina freemen. Foreigners, until made members of the State, remained aliens. Slaves, manumitted here, became freemen, and, therefore, if born within North Carolina, are citizens of North Carolina, and all free persons born within the State are born citizens of the State." *State v. Manuel*, 4 Dev. & Bat. 20, quoted with approval by Judge Curtis in the *Dred Scott* Case. Edmund Randolph's MS. "History of Virginia" would seem to indicate, that the difficulty was smoothed over in the Virginia Convention, on the hypothesis, that slaves were property. He says: "The Declaration in the first article of the bill of rights, that all men are by nature equally free and independent, was opposed by Robert Carter Nicholas, as being the forerunner, or pretext, of civil convulsion. It was answered, perhaps, with too great an indifference to futurity, and not without inconsistency, that, with arms in our hands, asserting the general rights of man, we ought not to be too nice, and too much restricted, in the delineation of them, but that slaves, not being constituent members of our society, could never pretend to any benefit from such a maxim." Conway's Edmund Randolph, 30.

¹ "When the Federal Constitution was adopted, all the States with the exception of Rhode Island and Connecticut, had constitutions of their own. These two continued to act under their charters from the Crown. Upon an examination of those constitutions we find that in no State were all citizens permitted to vote. Each State determined for itself who should have that power." *Minor v. Happersett*, 21 Wall. 162, 172. The new constitutions made the following minimum stipulations as preliminary to the suffrage: New Jersey (1776), property; Pennsylvania (1776), taxes; Maryland (1776), property; North Carolina (1776), taxes; Georgia (1777), property, or mechanical trade; New York (1777), property; Massachusetts (1780), property; New Hampshire (1784), poll tax; Rhode Island (charter), Connecticut (charter), South Carolina (1776), Virginia (1776), and Delaware (1776), as before. It is interesting to note particularly, that Virginia retained her previous high property qualification.

4. They had no relation to the Indians.¹

5. They did not assert, that the Colonists had a right of representation in Parliament, — that right the Colonists waived as impracticable, and did not want, — nor yet, that the Colonists desired an opportunity to interfere with imperial concerns, — they were willing to leave these entirely to a Parliament, in which they were not represented. What the Bill and Declaration did complain of, was the novel interference by the King and Parliament with the local affairs of the colonies, which had always hitherto been left solely to the Colonial legislatures, and, more particularly, of the taking of the property of the Colonists, in the shape of taxes, without their consent.

6. The Bill and Declaration were adopted by men mainly of British descent, — the equals of native-born subjects, — with the same capacity for government, — and morally entitled to the same rights. And the claims made by the Bill and Declaration, if not in terms, in fact, were made of a form of government, and state of society, that were civilized.

7. There was no *necessary* antagonism between the Declaration of Independence, and a monarchy. That is to say, it did not preach a crusade against all kingdoms. Nor does the Bill of Rights, though possibly more radical, do that.

XI.

It is impossible, within the scope of the present article, to develop these different propositions at full length. And, indeed, most of them are so indisputable as to make development superfluous. The most superficial knowledge of American history is sufficient to remove all doubt as to the first four, and, possibly, even as to the fifth, sixth, and seventh. The last three, however, while unques-

¹ Talk to the Six Nations, of July 13, 1775: "Brothers and Friends! We desire you will hear and receive what we have now told you, and that you will open a good ear, and listen to what we are now going to say. This is a family quarrel between us and old England. You Indians are not concerned in it." (The Six Nations, however, were inhabitants of New York State.) Journals of Congress, July 13, 1775. The committee consisted of five members: Philip Schuyler (N. Y.); Patrick Henry (Va.); James Duane (N. Y.); James Wilson (Penn.); and Philip Livingston (N. Y.). See also, *Elk v. Wilkins*, 112 U. S. 94: "The members of these tribes [Indian tribes] owed immediate allegiance to their several tribes, and were not part of the people of the United States. They were in a dependent condition, a state of pupilage, resembling that of a ward to his guardian" (p. 97).

tionably not admitting of much doubt, may yet perhaps be not entirely so axiomatic as the others, and should receive, therefore, a brief word or two by way of explanation.

XII.

And, *first*, of proposition 5, that the Colonists made no complaint, of non-representation in Parliament, to act upon imperial affairs, but, on the contrary, rather feared, that this right might be conceded to them.

January 30, 1768, Samuel Adams wrote to Dennys Deberdt, the Massachusetts colonial agent, in London: —

"You will observe that the House still insist upon that inestimable right of nature and the Constitution of being taxed only by representatives of their own free election; which they think is infringed by the late acts for establishing a revenue in America. *It is by no means to be understood that they desire a representation in Parliament, because, by reason of local circumstances, it is impracticable, that they should be equally and fairly represented. There is nothing, therefore, the Colonies would more dread.*"¹

The assertion is frequently reiterated.

In the Declaration of Rights and Grievances, of October 14, 1774: —

"Resolved, 4. That the foundation of English liberty and of all free government, is a right in the people to participate in their legislative council; and as the *English colonists are not represented, and from their local and other circumstances cannot properly be represented, in the British parliament, they are entitled to a free and exclusive power of legislation in their several provincial legislatures, where their right of representation can alone be preserved, in all cases of taxation and internal polity, subject only to the negative of their sovereign, in such manner as has been heretofore used and accustomed.*"²

This paragraph contains such a definite, and exact, statement of the position of the Colonists, prior to the Revolution, that it is worth quoting in full: —

"But from the necessity of the case, and a regard to the mutual interests of both countries, we cheerfully consent to the operation of such acts of the British Parliament as are *bona fide* restrained to the regulation of our external commerce, for the purpose of securing the commercial ad-

¹ 1 Wells's Life and Public Services of Samuel Adams, 167, 168.

² Journals of Congress, October 14, 1774.

vantages of the whole empire to the mother country, and the commercial benefits of its respective members; excluding every idea of taxation, internal or external, for raising a revenue on the subjects in America without their consent.”¹

In the Address to the People of Great Britain, of October 21, 1774:—

“ You have been told that we are seditious, impatient of government, and desirous of independency. Be assured that these are not facts, but calumnies. . . .

“ *Place us in the same situation that we were at the close of the last war, and our former harmony will be restored.*”²

In the Petition to the King, of October 25, 1774:—

“ We wish not a diminution of the prerogative, nor do we solicit the grant of any new right in our favor. *Your royal authority over us, and our connection with Great Britain, we shall always carefully and zealously endeavor to support and maintain.*”³

In the Second Address to the People of Great Britain, of July 8, 1775:—

“ After the most valuable right of legislation was infringed; *when the powers assumed by your parliament in which we are not represented, and from our local and other circumstances cannot properly be represented, rendered our property precarious*; after being denied,” etc., etc.⁴

In the Reply to Lord North’s “ Conciliatory Proposals,” of July 31, 1775:—

¹ Journals of Congress, October 14, 1774. The committee consisted of twenty-seven members, as follows: N. H., Nathaniel Folsom, John Sullivan; Mass., Samuel Adams, John Adams, Thomas Cushing; R. I., Stephen Hopkins, Samuel Ward; Conn., Eliphalet Dyer, Roger Sherman; N. Y., James Duane, John Jay; Penn., Edward Biddle, Joseph Galloway, Thomas Mifflin; N. J., John de Hart, William Livingston; Md., Robert Goldsborough, Thomas Johnson; Del., Caesar Rodney, Thomas M’Kean, Va., Patrick Henry, Richard Henry Lee, Edmund Pendleton; S. C., Thomas Lynch, John Rutledge; N. C., Joseph Hewes, William Hooper.

² Journals of Congress, October 21, 1774. The committee consisted of three members, as follows: Richard Henry Lee (Va.); [William] Livingston (N. J.); and John Jay (N. Y.).

³ Journals of Congress, October 25, 1774. The committee consisted of six members, as follows: Richard Henry Lee (Va.); John Adams (Mass.); Thomas Johnson (Va.); Patrick Henry (Va.); [John] Rutledge (S. C.); and John Dickinson (Penn.).

⁴ Journals of Congress, July 8, 1775. The committee consisted of three members, as follows: Richard Henry Lee (Va.); Robert R. Livingston (N. Y.); and Edmund Pendleton (Va.).

"While *parliament* pursue *their plan* of civil government within *their own* jurisdiction, *we* also hope to pursue *ours* without molestation."¹

And in the Reply to the Royal Proclamation, August 23, 1775, of December 6, 1775:—

"We condemn, and with arms in our hands, a resource which freemen will never part with, we oppose the claim and exercise of *unconstitutional powers, to which neither the crown nor parliament were ever entitled.*"²

XIII.

Secondly, of proposition 6, that the Colonists spoke for, and in the name of, themselves, as British subjects, the equals, in all respects, of those native-born within the kingdom.

The instances of this character are so numerous as almost to defy recapitulation. Several examples, however, will suffice.

In "A Summary View of the Rights of British America," published by order of the Virginia Convention of 1774, Jefferson says:—

"To remind him [the King] that our ancestors, before their emigration to America, were the free inhabitants of the British dominions in Europe," etc.³

See also:—

Declaration of Rights and Grievances, of October 14, 1774:—

"*Resolved*, 2. That our ancestors, who first settled these Colonies, were at the time of the emigration from the mother Country, entitled to all the rights, liberties, and immunities of free and natural born subjects, within the realm of England.

"*Resolved*, 3. That by such emigration they by no means forfeited, surrendered, or lost any of those rights, but that they were, and their descendants now are, entitled to the exercise and enjoyment of all such of them, as their local and other circumstances enable them to exercise and enjoy."

Address to the People of Great Britain, of October 21, 1774:—

¹ Journals of Congress, July 31, 1775. The committee consisted of four members, as follows: Benjamin Franklin (Penn.); Thomas Jefferson (Va.); John Adams (Mass.); and Richard Henry Lee (Va.).

² Journals of Congress, December 6, 1775. The committee consisted of three members, as follows: Richard Henry Lee (Va.); James Wilson (Penn.); and William Livingston (N. J.).

³ 1 Ford's Writings of Thomas Jefferson, 421, 429.

⁴ Journals of Congress, October 14, 1774.

"*Know then*, that we consider ourselves, and do insist, that we are and ought to be, as free as our fellow subjects in Britain, and that no power on earth has a right to take our property from us, without our consent.

"That we claim all the benefits secured to the subject by the English constitution," etc.¹

Petition to the King, of October 25, 1774: —

"The apprehension of being degraded into a state of servitude, from the pre-eminent rank of English freemen," etc.²

Address to the Inhabitants of Quebec, of October 26, 1774: —

"On the solid foundation of this principle, Englishmen reared up the fabric of their constitution, with such a strength, as for ages to defy time, tyranny, treachery, internal and foreign wars; and, as an illustrious author [Montesquieu] of your nation, hereafter mentioned, observes: 'They gave the people of their colonies the form of their own government, and, this government carrying prosperity along with it, they have grown great nations in the forests they were sent to inhabit.'"³

Declaration upon Taking Up Arms, of July 6, 1775: —

"Our forefathers, inhabitants of the island of Great Britain, left their native land, to seek on these shores a residence for civil and religious freedom. At the expense of their blood, at the hazard of their fortunes, without the least charge to the country from which they removed, by unceasing labor, and an unconquerable spirit, they effected settlements in the distant and inhospitable wilds of America, then filled with numerous warlike nations of Barbarians. Societies or governments, vested with perfect legislatures, were formed under charters from the Crown, and an harmonious intercourse was established between the colonies and the kingdom from which they derived their origin."⁴

Reply to Royal Proclamation, August 23, 1775, of December 6, 1775: —

"By the British constitution, our best inheritance, rights, as well as duties, descend upon us. We cannot violate the latter by defending the

¹ Journals of Congress, October 21, 1774.

² Journals of Congress, October 25, 1774.

³ Journals of Congress, October 26, 1774. The committee consisted of three members, as follows: Thomas Cushing (Mass.); Richard Henry Lee (Va.); and John Dickinson (Penn.).

⁴ Journals of Congress, July 6, 1775. The committee consisted of seven members, as follows: John Rutledge (N. C.); William Livingston (N. J.); Benjamin Franklin (Penn.); John Jay (N. Y.); Thomas Johnson (Md.); John Dickinson (Penn.); Thomas Jefferson (Va.).

former. We should act in diametrical opposition to both, if we permitted the claims of the British parliament to be established, and the measures pursued in consequence of those claims to be carried into execution among us. Our sagacious ancestors provided mounds against the inundation of tyranny and lawless power on one side, as well as against that of faction and licentiousness on the other. On which side has the breach been made?

“We mean not, however, by this declaration, to occasion or to multiply punishments. Our sole view is to prevent them. In this unhappy and unnatural controversy, in which Britons fight against Britons, and the descendants of Britons, let the calamities immediately incident to a civil war suffice. We hope,” etc.¹

And so on, *ad infinitum*.

XIV.

Thirdly, of proposition 7, that the Declaration of Independence was not a war upon all monarchy, constitutional or otherwise, here and elsewhere. It is not as sweeping, in this particular, as the Virginia Bill of Rights, and it would probably have surprised even the author of that, if he had been given to understand, that the Bill of Rights questioned the title of George III. to the throne of Great Britain. Even as late as December 6, 1775, the Colonists, in their Reply to the Royal Proclamation, August 23, 1775, say: —

“What allegiance is it that we forget? Allegiance to parliament? We never owed, — we never owned it. Allegiance to our king? Our words have ever avowed it, our conduct has ever been consistent with it.”

The principles of the Revolution were not of such mushroom growth. As Bancroft says: —

“In the next place, the declaration, avoiding specious and vague generalities, grounds itself with anxious care upon the past, and reconciles right and fact. Of universal principles enough is repeated to prove that America chose for her own that system of politics which recognizes the rule of eternal justice: and independence is vindicated by the application of that rule to the grievous instructions, laws and acts proceeding from the King, in the exercise of his prerogative, or in concurrence with the lords and commons of Great Britain. The colonies professed to drive back innovations, and not, with roving zeal, to overturn all traditional inequalities; they were no rebels against the past, of which they knew

¹ Journals of Congress, December 6, 1775.

the present to be the child ; with all the glad anticipations of greatness that broke forth from the prophetic soul of the youthful nation, they took their point of departure from the world as it was. They did not declare against monarchy itself ; they sought no general overthrow of all kings ; no universal system of republics ; nor did they cherish in their hearts a lurking hatred against princes. Till within a few years or months, loyalty to the house of Hanover had been to them another name for the love of civil and religious liberty ; the British constitution, the best system that had ever been devised for the security of liberty and property by a representative government. Neither Franklin nor Washington, nor John Adams, nor Jefferson, nor Jay had ever expressed a preference for a republic.¹ The voices that rose for independence spoke also for alliances with kings. The sovereignty of George III. was renounced, not because he was a king, but because he was deemed to be a tyrant.”²

XV.

If Judge Taney was wrong upon the point of constitutional law involved in the Dred Scott case, he was, at least, right in demanding, that the principles of the Declaration be brought into conformity with the acts of those who professed them. He says : —

“The general words, above quoted [‘All men,’ etc.], would seem to embrace the whole human family, and if they were used in a similar instrument at this day would be so understood. But it is too clear for dispute, that the enslaved African race were not intended to be included, and formed no part of the people who framed and adopted this declaration ; for if the language, as understood in that day, would embrace them, the conduct of the distinguished men who framed the declaration of independence would have been utterly and flagrantly inconsistent with the principles they asserted ; and instead of the sympathy of mankind to which they so confidently appealed, they would have deserved and received universal rebuke and reprobation.”³

The key to this problem, and other problems, before suggested, is to be found in Locke.

XVI.

The Declaration, primarily, had one thing, and one thing only, in view, and that was, a justification of the separation of the Colonies from Great Britain, and incidentally, therefore, a defence of

¹ Query, if text would not be more exact, with the words, “had ever,” omitted ?

² Bancroft’s History of the United States, 451.

³ Dred Scott v. Sandford, 19 How. 393, 410.

the rights of revolution in respect of the then condition of the original thirteen States. To this end, the lawyers of the day, who were, for the most part, the framers of state-papers then as now, turned to Locke's essay, and other kindred writings, to establish the justice of their contention. Locke's essay, as is said by him in the preface, was written in defence of the English Revolution of 1688,¹ and he had to prove, as the Colonies had to prove, that there was no such thing as the divine right of kings, and that, when a government failed to be true to its trust, it was the right, inherent, and inalienable, of the people, "to alter or abolish it, and to institute new government." Otherwise, there could have been no justification for that series of events, which, at the close of the 17th century, resulted in the replacing of James the Second upon the throne by William, Prince of Orange. Locke accomplished his object in this way: He first demolished the patriarchal theory of government, as descending from God through Adam, defended by Sir John Filmer in an essay, called "Patriarcha, or the Natural Power of Kings;" and then proceeded to the true foundation of civil society. Like other writers of his, and the 18th centuries, he traced this to the state of Nature,² and asserted that, in that state, all men are "equal" and "independent."³ These are the exact words of the original draft of the Declaration; and, also, of the Bill of Rights. By "equal" and "independent," Locke did not

¹ "Thou hast here the beginning and end of a discourse concerning government: what fate has otherwise disposed of the papers that should have filled up the middle, and were more than all the rest, it is not worth while to tell thee. These which remain I hope are sufficient to establish the throne of our great restorer, our present King William; to make good his title in the consent of the people; which being the only one of all lawful governments, he has more fully and clearly than any prince in Christendom; and to justify to the world the people of England, whose love of their just and natural rights, with their resolution to preserve them, saved the nation when it was on the very brink of slavery and ruin." Preface to the Two Treatises.

² "To understand political power right, and derive it from its original, we must consider what estate all men are *naturally* in." Second Treatise, § 4.

³ "A state of *perfect freedom* to order their actions, and dispose of their possessions and persons as they think fit, within the bounds of the law of nature, without asking leave or depending upon the will of any other man. A state also of *equality* wherein all the power and jurisdiction is reciprocal, no one having more than another, there being nothing more evident than that creatures of the same species and rank, promiscuously born to all the same advantages of nature, and the use of the same faculties, should also be equal one amongst another, without subordination or subjection." Second Treatise, § 4. Again: "The state of nature has a law of nature to govern it, which obliges every one; and reason, which is that law, teaches all mankind, who will but consult it, that being all *equal* and *independent*, no one ought to harm another in his life, health, liberty, or possessions," etc. *Ib.* § 6.

mean, that every man was born of the same height, or with the same mental or physical vigor,¹ but "equal," in the case of rational beings,² in respect of the laws of Nature, and the primordial right to enforce these laws. Every man according to Locke, until a state of society was entered into, was entitled to enforce the laws of Nature;³ and it was only, when society was formed, that this right of enforcement was transferred from the individual to the government.⁴

¹ "Though I have said above, 'That all men by nature are equal,' I cannot be supposed to understand all sorts of equality: age or virtue may give man a just pre-eminence: excellency of parts and merit may place others above the common level: birth may subject some, and alliance or benefits others, to pay an observance to those to whom nature, gratitude, or other respects, may have made it due: and yet all this consists with the equality which all men are in, in respect of jurisdiction or dominion one over another; which was the equality I there spoke of, as proper to the business in hand, being that equal right that every man hath to his natural freedom, without being subjected to the will or authority of any other man." *Second Treatise*, § 54.

² "The freedom then of man and liberty of acting according to his own will, is grounded on his having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will. To turn him loose to an unrestrained liberty, before he has reason to guide him, is not the allowing him the privilege of his nature to be free, but to thrust him out amongst brutes and abandon him to a state as wretched, and as much beneath that of a man, as theirs. This is that which puts the authority into the parent's hands to govern the minority of their children. God hath made it their business to employ this care on their offspring, and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it, as His wisdom designed it, to the children's good, as long as they should need to be under it." *Second Treatise*, § 63. And again: "Thus we are born free, as we are born rational; not that we have actually the exercise of either; age, that brings one, brings with it the other too." *Second Treatise*, § 61.

³ "And that all men may be restrained from invading others' rights, and from doing hurt to one another, and the law of nature be observed, which willeth the peace and preservation of all mankind, the execution of the law of nature is, in that state, put into every man's hands, whereby every one has a right to punish the transgressors of that law to such a degree as may hinder its violation: for the law of nature would, as all other laws that concern men in this world, be in vain, if there were nobody that in the state of nature had a power to execute that law, and thereby preserve the innocent, and restrain offenders: And if any one in the state of nature may punish another for any evil he has done, every one may do so: for in that state of perfect equality, where naturally there is no superiority or jurisdiction of one over another, what any may do in prosecution of that law, every one must needs have a right to do." *Second Treatise*, § 7.

⁴ "Whenever, therefore, any number of men are so united into one society, as to quit every one his executive power of the law of nature, and to resign it to the public, there and there only is a political or civil society. And this is done, wherever any number of men, in the state of nature, enter into society to make one people, one body politic, under one supreme government; or else when any one joins himself to, and incorporates with any government already made: for hereby he authorizes the society, or, which is all one, the legislative thereof, to make laws for him, as the public good of the society shall require; to the execution whereof, his own assistance (as to his own de-

This result was effected by "compact,"¹ from which arose obligations on the part of the government, as well as the governed, to respect the chief object and end of civil society, to wit, the security of the individual in his life, liberty, and property, and that happiness that springs from the free enjoyment of these. In other words, government derived its powers directly from man, and not from God; and, of course, if government was established by consent, it could, when occasion demanded, be altered or abolished by that consent which created it. Locke does not say, that this consent is necessarily expressly given; it may be given by implication;² and the principle, as such, is as consistent with a

crees) is due: And this puts men out of a state of nature into that of a commonwealth, by setting up a judge on earth, with authority to determine all the controversies, and redress the injuries that may happen to any member of the commonwealth; which judge is the legislative or magistrate appointed by it. And wherever there are any number of men, however associated, that have no such decisive power to appeal to, there they are still in the state of nature." Second Treatise, § 89.

¹ "Men being, as has been said, by nature all *free, equal, and independent*, no one can be put out of his estate, and subjected to the political power of another, without his own consent. The only way whereby any one divests himself of his natural liberty, and puts on the bonds of civil society, is by agreeing with other men to join and unite into a community for their comfortable, safe, and peaceable living one amongst another, in a secure enjoyment of their properties, and a greater security against any that are not of it. This any number of men may do, because it injures not the freedom of the rest; they are left, as they were, in the liberty of the state of nature. When any number of men have so consented to make one community or government, they are thereby presently incorporated, and make one body politic, wherein the majority have a right to act and conclude the rest." Second Treatise, § 95. Again: "Whosoever, therefore, out of a state of nature unite into a community, must be understood to give up all the power necessary to the ends for which they unite into society, to the majority of the community, unless they expressly agreed in any number greater than the majority. And this is done by barely agreeing to unite into one political society, which is all the compact that is, or needs be between the individuals that enter into, or make up a commonwealth. And thus that which begins and actually constitutes any political society, is nothing but the consent of any number of freemen capable of a majority, to unite and incorporate into such a society. And this is that, and that only, which did or could give beginning to any lawful government in the world." *Ib.* § 99.

² "Every man being, as has been showed, naturally free, and nothing being able to put him into subjection to any earthly power, but only his own consent; it is to be considered, what shall be understood to be a sufficient declaration of a man's consent to make him subject to the laws of any government. There is a common distinction of an *express* and a *tacit consent*, which will concern our present case. Nobody doubts but an express consent of any man, entering into any society, makes him a perfect member of that society, a subject of that government. The difficulty is, what ought to be looked upon as a tacit consent, and how far it binds, — *i. e.*, how far any one shall be looked on to have consented, and thereby submitted to any government, where he has made no expressions of it at all. And to this I say, that every man, that hath any possessions, or enjoyment of *any part of the dominions* of any government, doth thereby give his tacit

monarchy, or an oligarchy, as it is with a republic.¹ The point that Locke makes, is, that kings do not have an imprescriptible right to their thrones, but that all government rests ultimately upon the will of the people, and that they, for adequate cause, when they so choose, can change it, or do away with it altogether. That is to say, there is somewhere an ultimate right of revolution.²

This postulate it was, and this principally, wherewith the Declaration had to deal, and not the institution of government. What form that was to take, the Congress had not the authority to de-

consent, and is as far forth obliged to obedience to the laws of that government, during such enjoyment, as any one under it, whether this his possession be of *land, to him and his heirs for ever*, or a *lodging only for a week*; or whether it be barely *travelling freely on the highway*; and, in effect, it reaches as far as the *very being of any one within the territories* of that government." Second Treatise, § 119.

¹ "The majority having, as has been showed, upon men's first uniting into society, the whole power of the community naturally in them, may employ all that power in making laws for the community from time to time, and executing those laws by officers of their own appointing; and then the form of the government is a perfect democracy: or else may put the power of making laws into the hands of a few select men, and their heirs or successors; and then it is an oligarchy: or else into the hands of one man, and then it is a monarchy: if to him and his heirs, it is an hereditary monarchy: if to him only for life, but upon his death the power only of nominating a successor to return to them, an elective monarchy. And so accordingly of these the community may make compounded and mixed forms of government as they think good. And if the legislative power be at first given by the majority to one or more persons only for their lives, or any limited time, and then the supreme power to revert to them again; when it is so reverted, the community may dispose of it again anew into what hands they please, and so constitute a new form of government: for the form of government depending upon the placing the supreme power, which is the legislative (it being impossible to conceive that an inferior power should prescribe to a superior, or any but the supreme make laws), according as the power of making laws is placed, such is the form of the commonwealth." Second Treatise, § 132.

² "221. There is, therefore, secondly, another way, whereby governments are dissolved, and that is, when the legislative, or the prince, either of them, act contrary to their trust. First, the legislative acts against the trust reposed in them, when they endeavor to invade the property of the subject, and to make themselves, or any part of the community, masters, or arbitrary disposers of the lives, liberties, or fortunes of the people. 222. The reasons why men enter into society is the preservation of their property; and the end why they choose and authorize a legislative is, that there may be laws made, and rules set, as guards and fences to the properties of all the members of the society: to limit the power, and moderate the dominion, of every part and member of the society: for since it can never be supposed to be the will of the society that the legislative should have a power to destroy that which every one designs to secure by entering into society, and for which the people submitted themselves to legislators of their own making; whenever the legislators endeavor to take away and destroy the property of the people, or to reduce them to slavery under arbitrary power, they put themselves into a state of war with the people, who are thereupon absolved from any farther obedience, and are left to the common refuge, which God hath provided for all men, against force and violence." Second Treatise, § 221, § 222.

termine, but, at most, a power of suggestion, or recommendation. The people of the several States, were to say, and they, of course, would decide, in the manner suitable to their habits and prejudices as English freemen, and in keeping with the necessities and requirements of the case as they found them. These of themselves, forbade a monarchy, or an aristocracy, but all such issues were to be of a later determination. Matters of forms of government, and systems of suffrage and representation, were not now involved. The question then and there was one purely of political dominion. Was a revolution justifiable? Even this question would not have arisen, if the Parliament and King had confined themselves to imperial affairs, and not attempted, contrary to precedent, to meddle with the internal concerns of the Colonies.

XVII.

Here, then, at last, is the solution. It removes the inconsistency, which always seems so baffling, when we contrast what the fathers said with what they did. It takes nothing from the glory of the Declaration, or the fame of the great men who framed it. It leaves these intact. But it does make the Declaration what it was, — the justification of the Revolution, — the right of a people to revolt against oppression, — and yet, at the same time, furnishes no basis for the charge against the fathers of inconsistency, or self-stultification. These men were largely men of the English race, and they had the traits of character that have given that race predominance in the world. They built on facts, and proceeded one step at a time, looking before, and around as well as above them. They had no love of failure, or intangible ideals, or disorder, or confusion. All their acts bear out this judgment of them. When they gave the Declaration to the world, they gave it as the pledge of their faith, and meant by it, not the propaganda of anarchy, or the demolition of civil society, but the foundation of government, upon the basis of law and justice, with freedom as broad and full as the dictates of prudence and sagacity suggested, or was compatible with the sovereign principle, never to be overlooked, that that government is best, which, not in purpose only, but in fact, brings the greatest good to the greatest number.¹

William F. Dana.

¹ See an interesting letter of John Adams to James Sullivan, May 26, 1776, discouraging the latter from raising the question of suffrage in Massachusetts at the time of the

discussion of the form of the State Constitution. Also the Virginia Bill of Rights, cited above: "Government is, or ought to be, instituted for the common benefit, protection, and security of the people, nation, or community. Of all the various modes and forms of government that is best, which is capable of producing the greatest degree of happiness and safety, and is most effectually secured against the danger of mal-administration." And also the Declaration of Independence, which seems to hint at a like doctrine: "*To secure these Rights* [Life, Liberty, and the pursuit of Happiness], governments are instituted among men," etc. And again: "Whenever, etc., . . . it is the right of the people, etc., . . . to institute new government, laying its foundation on such principles, and organizing its powers in such form, as to them shall seem *most likely to effect their safety and happiness.*"